

Reconsideration of the claims is respectfully requested.

35 U.S.C. § 103 (Obviousness)

Claims 1, 35-41 and 49-53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Japanese Patent Publication No. JP5074958 ("JP '958") in view of U.S. Patent No. 4,252,595 to *Yamamoto et al.* This rejection is respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

As previously noted, independent claims 1 and 49 recite that the opening through the multi-layer dielectric structure, which is formed partially by an isotropic etch (with a nitride etch stop layer within the dielectric structure) and partially by an anisotropic etch, is etched through the patterned resist layer without stripping the resist between etch steps. JP '958 teaches removal of photoresist 112 after wet (isotropic) etching and before dry (anisotropic) etching. See July 2000 translation of JP '958 by Diplomatic Language Services, Inc., page 7, lines 13-16. Instead, JP '958 teaches reliance upon the thickness of the upper (oxide) portion of the dielectric structure during completion of the contact opening by dry etching. Accordingly, JP '958 does not teach or suggest the present invention. *Yamamoto et al* similarly does not teach or suggest

etching an opening through a multi-layer dielectric structure using both an isotropic etch and an anisotropic etch without stripping the masking resist between etch steps.

Therefore, the rejection of claims 1, 35-41 and 49-53 under 35 U.S.C. § 103 has been overcome.

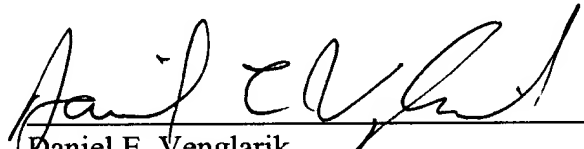
If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at *dvenglarik@davismunck.com*.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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